

House Oversight Committee

June 18, 2013

House Bill 4707

Remarks from NICK CIARAMITARO

Director of Legislation and Public Policy, Michigan AFSCME Council 25 and MSEA AFSCME Local 5

Thank you Mr. Chairman. For the record, my name is Nick Ciaramitaro and I am Director of Legislation and Public Policy for Michigan AFSCME Council 25 and the Michigan State Employees Association. Together these organizations represent proud members of the state civil service commission in every department of state government.

Michigan AFSCME is pleased to see the changes made in the substitute before you which are designed to correct some of the problems with House Bill 4707 – the Bid Rigging bill – as originally introduced. But we must continue to oppose the bill as ambiguities in the language still give an unfair advantage to those companies who choose to bid on internal work of the state civil service system. It is important to recognize the history of the state civil service system. The system was placed initially in our State Constitution by a vote of the people of the State of Michigan in a referendum and reaffirmed by vote of the people of the State of Michigan in adoption of the Constitution of the 1963. Prior to the push by the public to establish a constitutional civil service system many legislatures over the years repeatedly tried to undermine statutory civil service systems until merit and government employment security were firmly chosen over patronage by Michigan voters and firmly established in our State Constitution. Today the effort to reestablish a new patronage style system has reemerged. Though proponents of so-called “privatization” have long insisted that they simply want to assure the benefits of competition for taxpayer funding, this bill is a political response motivated by a desire to reinject political influence in the contracting process.

Michigan AFSCME strongly supports transparency in government, including online information about the operation of government, subject of course to necessary privacy interests of employees, but we oppose compilation and dissemination of data for the purpose of assisting bidders. While the substitute is an improvement over the bill as introduced, it is ambiguous as to what information is to be provided to whom and when. It is strange that it only applies to bidders who seek to replace civil servants suggesting the opposite of what our constitution provides – that a civil service system is the default (and preferred system) of state employment. Bidders do have a right to know the bases upon which bids are to be judged. But this decision properly and constitutionally belongs before the Michigan Civil Service Commission.

I have provided you with the State Constitutional Language on this issue with my written testimony. While I recognize the obvious desire of the Legislature to make decisions – especially decisions that affect the state’s budget, it is important to recognize that its powers are subject to Michigan’s State Constitution.

This bill would do two things:

(1) It would require taxpayers to pay for providing additional bidding information that should be paid by the bidder. While most of the information sought by bidders is already available on line, state taxpayers could pick up the cost of researching and compiling that data for prospective bidders.

(2) It would render the bidding process – both between public and private employers and among private employers subject to suspicion. Many members of this Legislature have long called for the State to

"operate as a business." Yet bid rigging as *required* by the original legislation and hinted at in the substitute is *illegal* in the private sector. The process of sealed bids has long been used in the private sector. Sharing information among bidders has long been viewed as illegal as it allows bidders to *increase* their bids to come just below the competition rather than providing their most efficient proposal. That principal should not be weakened or undermined simply because the consumers are the taxpayers of the State of Michigan.

Finally, the substitute includes new language exempting important information from the Freedom of Information Act. It seems strange to me that the legislation would suggest, in the same paragraph that provides bidders information, taxpayers and the public should be denied information.

AFSCME urges you to reject this legislation. Thank you for your consideration.

# Michigan Constitution of 1963

(selected excerpts)

## ARTICLE 11, §5—CLASSIFIED STATE CIVIL SERVICE

The classified state civil service shall consist of all positions in the state service except those filled by popular election, heads of principal departments, members of boards and commissions, the principal executive officer of boards and commissions heading principal departments, employees of courts of record, employees of the legislature, employees of the state institutions of higher education, all persons in the armed forces of the state, eight exempt positions in the office of the governor, and within each principal department, when requested by the department head, two other exempt positions, one of which shall be policy-making. The civil service commission may exempt three additional positions of a policy-making nature within each principal department.

The civil service commission shall be non-salaried and shall consist of four persons, not more than two of whom shall be members of the same political party, appointed by the governor for terms of eight years, no two of which shall expire in the same year.

...

The commission shall classify all positions in the classified service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, determine by competitive examination and performance exclusively on the basis of merit, efficiency, and fitness the qualifications of all candidates for positions in the classified service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service.

...

No person shall be appointed to or promoted in the classified service who has not been certified by the commission as qualified for such appointment or promotion. No appointments, promotions, ~~demotions or removals in the classified service shall be made for religious, racial or partisan~~ considerations.

...

No payment for personal services shall be made or authorized until the provisions of this constitution pertaining to civil service have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.

